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Lessons from Article 50: Why exit clauses should include penalties for the seceding state



If Article 50 enabled Brexit, does this mean that exit clauses make secessions from a political union more likely? Drawing on a new study, [Martijn Huysmans](#) and [Christophe Crombez](#) demonstrate that exit clauses which incorporate penalties for the seceding state can lead to more efficient exit decisions. They argue that further research into exit clauses might help enable efficient exits from political unions such as the EU and mitigate the problem of violent secessions from federations.

Conceptually, an exit clause with appropriate penalties for leaving can enable what is known as 'efficient breach'. This means breaking a contract in a case where, adding up the benefits and harms to all parties, it is efficient to do so.

In a union like the EU, exit would be efficient if the costs of staying to a given member exceeded the benefits to the rest of the union if the member remained. This could happen if material conditions have changed such that centralised policies hurt the member more than the benefits of its membership to others in the form of economies of scale in government and trade.

Theoretically, to enable efficient exit, one should impose a penalty for leaving. The penalty should be equal to the lost benefits for the remainder of the union, plus the transaction costs of implementing the exit. In a [recent study](#), we demonstrate this more formally in a model with two periods, and an alternative model in continuous time – where exit is possible at any time, so long as it has not happened yet.



Theresa May signing the UK's letter of notification setting out the United Kingdom's intention to withdraw from the European Union, Credit: [Number 10/Jay Allen](#) (Crown Copyright)

While the EU is not a federal country, federations may offer a relevant point of comparison. Looking at federal constitutions past and present, none have exit clauses with penalties, but several do have exit clauses. For instance, the two-island federation of Saint Kitts and Nevis allows Nevis to secede by a two-thirds majority. Under the Good Friday agreement, the devolved United Kingdom allows Northern Ireland to join a united Ireland.

Historically, the 2003 State Union of Serbia and Montenegro allowed for secession after a three-year waiting period. Montenegro exercised this option in 2006, after obtaining more than the requisite 55% in a referendum. While the clause did not contain an exit payment, the fact that the three-year waiting period was respected and no violence occurred suggests that exit clauses with conditions may effectively enable smoother exits from political unions.

Article 50 allows for a costless exit

Ever since it came into force with the Treaty of Lisbon, Article 50 allows any EU member state to leave the EU. If no agreement is reached two years after notification of the intent to leave, the EU treaties cease to apply. While the UK triggered Article 50 in March 2017, it has since successfully requested multiple extensions to this two-year period.

Article 50 does not specify an exit penalty. The EU has argued that the UK should pay a settlement, but this is related to prior commitments. An explicit exit penalty could have imposed the payment of membership fees for a number of years after the exit without any benefits. An obligation to pay back the administrative costs of exit on the EU side could also have been included.

Since the UK's exit from the EU clearly seems inefficient, one may blame Article 50 as making exit from the EU too easy. And indeed, considering the theory we have developed, not specifying an exit penalty (or other conditions such as a supermajority referendum) would lead to socially inefficient exit decisions.

Conclusion

Through exit clauses with penalties for leaving, political unions such as the EU could enable efficient exit decisions. In the real world, while some federations have exit clauses, none specify penalties. So, no direct empirical proof of this claim is available. However, the Brexit case does seem to illustrate that costless exit clauses lead to inefficient exit decisions. Furthermore, the issue of violent secession in federal countries is clearly serious enough to justify more research into exit clauses.

For more information, see the authors' accompanying article at [Constitutional Political Economy](#).

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Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics.

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